IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting.

(Chapter VIII, Rule 32 (2) (b)

Description of the Case.

CRLA No. 1044 of 2003 . decided on 22-12-03

Dev Singh & others Vs State

Approved for reporting

~~Not approved for reporting~~

Date of decision 22.12.2003 Initial of Judge

Note- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH OCURT OF UTTARANCLAL AT NAINITAL

Criminal Appeal No. 1044/2001
(Old No. 1844 of 1982)

1- Dev Singh S/o Swarn Singh,
2- Chhinda Singh S/o Swarn Singh -(since deceased)
3- Kashmir Singh S/o Swarn Singh,
4- Balbir Singh @ Bablu son of Swarn Singh -(since deceased)
All R/o Bhawanipur Khulwa
P.S. Ram Nagar District Nainital ..Appellants.

Vs

State ..Respondent.

Sri Dharma Veer Sharma, learned counsel for the appellants.
Sri H.C.Pandey learned A.G.A. for the respondent.

Date: 22-12-2003

ORAL JUDGMENT **(Per: Hon'ble Irshad Hussain, J.)**

This is an appeal under section 374(2) of the Code of Criminal Procedure (for short 'Code') against the judgment dated 29-7-1982 passed by the then Ist Additional Sessions Judge, Nainital in Sessions Trial No. 151 of 1980, convicting and sentencing the appellants to undergo R.I. for seven years under section 307 I.P.C. read with section 34 I.P.C.

2- Appellants Chhinda Singh and Balbir Singh @ Bablu are since deceased, appeal in relation to them stand abated under section 394(2) of the 'Code".

3- The prosecution case briefly stated is that injured Darshan Singh (P.W.3) left his agricultural plot in village Bhawanipur Khulwa within the circle of P.S., Ram Nagar district, Nainital at 4 p.m. on 17-12-1979 to make sundry purchase for his house from Pirumadara. At about 5.30 p.m. when he reached near Gumanpur railway line he was way-laid by these four appellants. They wielded Lathis, sticks, iron rod etc in the assault. On sustaining injuries he fell there on the ground unconscious. Informant Gyan Singh (P.W.1) resident of Himmatpur Andhria happened to pass by the site of the incident and he found the injured lying there. At that very moment Tarsem Singh and Jagatar Singh came running there and told him that the appellant namely Dev Singh,

Chhinda Singh, Kashmir Singh and Bablu alias Balbir Singh had assaulted the injured Darshan Singh after they emerged form the nearby sugar-cane field. These assailants have then filed from there. Informant with the help of his brother brought the said injured to Ramnagar hospital on a tractor-trolley. The injured was admitted in the hospital and thereafter informant, Gyan Singh got written report (Ext.Ka.4) prepared and lodged the same at P.S. Ramnagar the same day i.e. 17.12.1979 at 20.45 hours. Check F.I.R. (Ext. Ka.1) and G.D. report (Ext.Ka.2) of registration of the case under sections 308/323 I.P.C. against these appellants were prepared by Head Moharir Irshad Ahmad (P.W.1) of the said police station. Investigation of the case was taken up by S.I. Hari Shankar Tiwari (P.W.5) who recorded the statements of the witnesses, prepared the site plan (Ext. Ka.7) and submitted charge-sheet (Ext.Ka.9) against the appellants on 25-1-1980.

4- Injured Darshan Singh regained consciousness in Ramnagar hospital on third day at about 10 a.m. and his statement was recorded. It alsodisclosed the cause of the crime. It was the enmity on account of some dispute and altercation which took place on the day of occurrence at about 2 p.m. while said injured was irrigating his field and appellant Kashmir Singh came to him and wanted him to explain as to why the water reached in his plot. Darshan Singh told him that since the appellant had himself ploughed the water channel (Gool) as such it was because of his own fault that the water flowed into his field. The appellant was not satisfied with the said explanation and he felt annoyed with Darshan Singh and at that time gave him threat to give him a lesson later-on. Darshan Singh did not take the threat seriously and kept himself engaged in the work till he left his village at about 4 p.lm. for Pirumadara and in the way the incident of assault on him took place.

5- As stated above the injured Darshan Singh was brought to Civil Hospital Ramnagar by informant Gyan Singh and the injured was medically examined there at 7.30 p.m. on 17-1-1979 by Dr. S.P. Singh (P.W.4). The injuries found on the person of the injured Darshan Singh were as below:-

(1) Lacerated wound middle of fore-head above down 3cm x 1/3 cm x bone deep. Fresh bleeding present. Kept under observation.

(2) Lacerated wound oblique 6cm x ½ cmx bone deep,14 cm above from right trangus. Fresh bleeding present. Kept under observation.

(3) Lacerated wound posteriorly right temple 5cm x ¾ cm x bone deep, fresh bleeding. Kept under observation.

(4) Abraised contusion left side of fore-head 5 cm x 2 cm. Fresh oozing present, red ring present. Kept under observation.

(5) Lacerated wound posterior base of lateral side of little finger of right hand, 1.5cm x 1/3 cm x muscle deep, fresh bleeding present, under observation.

(6) Contusion size 17 cm x 2 cm, red in colour front of chest across mid line, under observation.

(7) Contusion 24cm x 2cm, 2 cm below to injury no.6 across mid line, red ring present, under observation.

(8) Abraised contusion, laterally, upper part of left fore-arm, 6cm x 4cm. Red ring present, fresh oozing present. Under observation.

(9) Lacerated wound with contusion around middle of medial side of left fore arm 2cm x 1/3 cm x sub-cutaneous. Fresh bleeding present. Red ring present.

(10) Contusion laterally middle of right upper arm 4cm x 4cm. Red ring present.

(11) Abrasion back of right elbow 2cm x 2cm. Fresh oozing present.

(12)Lacerated wound anteriorly left knee 2cm x ½ cm x depth not clear side to side. Fresh bleeding present. Under observation.

(13) Lacerated wound with swelling around middle of left leg anteriorly 11/2 cm ½ cm x bone deep, fresh bleeding present. Advised x-ray. Under observation.

(14) Lacerated wound with swelling around middle of right leg anteriorly 1cm x 1 cm x bone deep, fresh bleeding present. Advised x-ray. Under observation.

6- In the opinion of the medical officer all injuries well fresh and were caused by blunt weapon such as Lathi- Danda, iron rod etc. On 18-12-1979 effected parts of the body were x-rayed and supplementary report (Ex.Ka.6) was prepared. There was no fracture of the bones of the skull. However fracture of condyle of left femur, fracture of shaft of tibia of left leg and fracture of shaft of tibia of right leg were confirmed and therefore injury nos. 12, 13 and 14 were mentioned as grevious. On 19-12-1979 injured was referred to Meerut Medical College for further better management.

7- Appellants in their statements under section 313 of the 'Code' denied the allegations of the prosecution and contended that they have been falsely implicated at the instance of informant Gyan Singh.

8- In the trial the prosecution in order to bring home to guilt to the appellants examined five witnesses. Their names have been referred above. In defence appellants examined Bhairab Dutt (D.W.1) to prove on the basis of the "Patra", that on the day of the incident i.e. 17-12-1979 the sun had set at 5.10 p.m. The learned Sessions Judge on the basis of his appreciation of the evidence accepted the claim of the prosecution that these appellants assaulted Darshan Singh at the time and place as alleged with intention to commit the murder of the said victim and accordingly convicted and sentenced them as aforesaid.

9- I have heard the learned counsel for both the parties and have carefully scrutinized the evidence on record and have also perused the judgment under appeal.

10- Learned counsel for the appellants in the first instance argued that the learned trial Judge did not consider the evidence of the prosecution in proper perspective so far as it relate to the time and place of the occurrence and thereby made a mistake in accepting the prosecution version. Having considered the evidence on record I see no substance I the argument. The reason is that the place of the incident i.e. near the Gumanpur railway corssing as also shown in the site-plan (Ext.Ka7) is fixed by the evidence of P.W.2, informant Gyan Singh as well as the evidence of P.W.3, injured Darshan Singh. Darshan Singh gave out that he was assaulted when he was about 10-15 paces away form the railway crossing while he was going to Pirumadara and there is nothing substantial in his cross-examination which may indicate that he has supported the truth. Informant Gyan Singh found the said injured lying unconscious at that site and there is also nothing material as may in any way show that the witness has not given the truthful version about the place of the occurrence. No doubt as stated by investigating officer P.W.5, S.I. Hari Shankar Tiwari the blood was not found at the site of the incident but we can not lose sight of the fact that the place of the incident is close to the agricultural plot and there being soil at the spot, the blood was obliterated by the next day when I.O. reached there to prepare the site-plan. Therefore this aspect of the matter can not be taken to create doubt about the place of the incident particularly when the two witnesses are categorical in their assertion about it.

11- In regard to the time of the occurrence again the evidence of both these witnesses is definite and cogent and I find no substance in the claim that the occurrence probably took place at about 6.30 p.m. as suggested by the defence

to P.W.2. and P.W.3. The F.I.R. was lodged at the police station at 20.40 hours and the learned counsel for the appellants submitted that in case the occurrence took place at about 5.30 p.m. and the injured was shifted soon-after on tractor-trolley at a distance of only about 9 kilometers to the town of Ramnagar to admit him in the hospital and then to lodge the report not more than half an hour was required an since the F.I.R. was lodged after more than three hours it gives and indication that the occurrence in fact took place more than an hour after the time of the occurrence as alleged by the prosecution. This submission of the learned codunsel also carry no conviction because the informant, Gyan Singh gave definite evidence to the effect that much time was taken in shifting the injured from the place of the incident due to the critical condition of the injured. According to him the tractor trolley was driven very slowly so that the injured may not sustain further damage due to jerks. In a situation like this the conduct was quite natural and the same can not at all be viewed with suspicion and it can not be accepted that such a claim was made merely to make up the time gap in shifting the injured to the hospital at Ramnagar and thereafter to lodge the report at the police station. This apart, as stated above the evidence of both P.W.2 and P.W.3 being definite and cogent I am not inclined to find favour with the argument of the learned counsel. The view expessed by the learned trial Judge that the incident took place at the place and time as alleged and the F.I.R. of the case is not ante-timed is based on fair appraisal of the evidence on record.

12- It was next argued that the interested testimony of injured Darshan Singh is not sufficient to prove that he was assauled by the appellants in the manner as alleged. To support his argument learned counsel pointed ou that two witnesses namely Jagtar Singh and Tarsen Singh named in the F.I.R. were not produced in evidence and in a situation like this the sole interested testimony of the injured did not inspire confidence and deserve to be disbelieved. Record reveal that the two witnesses named in the F.I.R. were got discharged by the prosecution on the ground that they were not willing to support the prosecution version. Since they turned hostile there was no necessity to produce them in evidence and merely because it is so the evidence of the injured can not be said to be insufficient to bring home guilt to the appellants. The only requirement in such a situation was to carefully scrutinize the evidence of the injured and if his evidence was truthful and inspiring confidence there was no legal impediment to act upon it to convict his assailants.

13- It is evident that the learned trial Judge appraised the evidence of injured Darshan Singh with great care and caution and found his evidence wholly reliable. I see no reason to take any contrary view because the evidence of the said injured is cogent and definite that he was way-laid by the appellants while he was going to Pirumadara and reached near the railway crossing at about 5.30 p.m on the fateful day. All the assailants were his neighbours and any mistake in fixing their identity at the time of the assault is ruled out. Moreover, as is evident from the medical evidence he was given good number of blows of Lalthi, stick and iron rod and in a situation like this the victim naturally had sufficient opportunity to fix the identity of the assailants.

14- The learned counsel for the appellants by referring to the statement of the injured also submitted that since the culprits made assault on the injured from his back there was no opportunity for him to identify the assailants and in all probabilities the appellants were falsely roped in on account of previous enmity and mere suspicion. The argument lack merit because injured Darshan Singh specifically stated that on receiving blows he turned back and found himself that he was being assaulted by the appellants also named by him. The evidence of the injured stand corroborated by the medical evidence in as much as the injuries found on his person were also sustained form the front side. Learned counsel then referred to the statement of Dr. S.P.Singh (P.W.4) to contend that injured Darshan Signh must have become unconscious on receiving injury nos. 1 to 4 on the head and he was therefore not in a position to identify his assailants. Here it need to be pointed out that injury no. 1 was on the forehead which clearly indicate that the injured Darshan Singh also received blow form the front which must have facilitated him to fix the identity of his assailants even before he became unconscious as a result of head injuries. Therefore, the evidence of the medical officer also does not come to the rescue of the appellants to assail the evidence of the injured. On a consideration of the entire evidence of the injured it is obvious that he is wholly truthful witness and the learned trial Judge made absolutely no mistake in placing implicit reliance on his evidence to come to the conclusion that the appellants made assault on him and caused injuries at the time and place as alleged.

15- In regard to the motive of the crime it need to be stated that on the day of the occurrence itself some altercation took place between the appellant Kashmir Singh and injured Darshan Singh on the issue of flooding of the

agricultural plot due to damage of the water channel and the appellant Kashmir Singh having then been blamed by the injured for this happening. The appellant at that time got annoyed and gave a thereat to teach a lesson to the injured. Therefore, the said appellant had reason to make assault on the victim alongwith his brothers and therefore the motive part of the case was also established beyond doubt. The learned trial Judge also took note of this aspect of the matter and arrived at a conclusion in favour of the prosecution.

16- In view of above there can be no doubt that the evidence of the inured was, coupled with the attending facts and circumstances, sufficient to prove that the appellants assaulted the injured Darshan Singh by wielding Lathis, sticks and iron rod at about 5.30 p.m. on 17.12.1979 near Gumanpur railway crossing, within the circle of P.S., Ramnagar district, Nainital.

17- It was lastly submitted by the learned counsel that the facts and circumstances of the case do not indicate that the assailants have intended to commit the murder of the injured Darshan Singh and therefore the appellants should not have been held liale for an offence of attempt to commit murder punishable under section 307 I.P.1C. and that at the most it may be a case of causing grevious injuries punishable under section 325 of the Indian Penal Code. It is of significance that no fracture of the skull bones was detected in the case of injured and therefore there is force in the submission of the learned counsel that the assailants have not given blows on the head with the intention of committing the murder of the victim. The injured had sustained grevious injuries of blunt object and therefore it will not be unsafe to hold that the appellants should not have been held guilty of attempt to commit murder punishable under section 307 I.P.C. The appellants are therefore entitled to be held responsible for causing grevious inuries of blunt object to the injured Darshan Signh and their conviction need to be altered to one under section 325 I.P.C. read with section 34 I.P.C. In the face of the facts of the case the sentence of two years R.I. and a fine of Rs. 3000/- each under section 325 I.P.C. read with section 34 I.P.C. against the appellants shall be sufficient to meet the ends of justice.

18- For the reason aforesaid this appeal partly succeed. The conviction and sentence of the appellants Dev Singh and Kashmire Singh under section 307 I.P.C. read with section 34 I.P.C. as awarded by the learned trial Judge per judgment dated 29-7-1982 is set aside and instead appellants Dev Singh and Kashmire Singh are convicted and sentenced to undergo R.I. for 2 (two) years

and to pay a fine of Rs. 3000/-(three thousand) each under section 325 I.P.C. read with section 34 I.P.C. In default of payment of the fine the appellants shall suffer further R.I. for 6 (six months). The appellants Dev Singh and Kashmir Singh are on bail. Their bail bonds are cancelled. They shall be taken into custody and sent to jail to serve out the sentence so awarded.

19- Fine, if realized, shall be paid as compensation to the injured Darshan Singh.

20- Let the recode be sent back to the court concerned for compliance. The compliance report be submitted within a month.

(Irshad Hussain, J.)

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